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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 42

GUY A. THOMPSON, TRUSTEE,
THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY, DEBTOR, AND
THE ST. LOUIS, BROWNSVILLE AND MEXICO RAILWAY COMPANY, *Petitioners*,

v.

THE TEXAS MEXICAN RAILWAY COMPANY, *Respondent*

BRIEF FOR PETITIONERS

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THE TEXAS MEXICAN RAILWAY COMPANY, *Respondent*

BRIEF FOR PETITIONERS

Opinion Below

The Supreme Court of Texas did not file or render any opinion. The opinion of the Court of Civil Appeals (R. 189, 198) is not officially reported but may be found in 181 S.W. (2d) 895.

Grounds of Jurisdiction

Jurisdiction of this Court is invoked under Section 237b of the JUDICIAL CODE, as amended by the Act of February 13, 1925, 28 U.S.C., Sec. 344b, 43 Stat. 937.

Jurisdiction was discussed at some length in the brief filed in support of the Petition for Certiorari (pp. 11 and 12).

Since the writ has been granted that discussion will not be repeated here.

Statement of the Case

On November 1, 1904, Petitioner, The St. Louis, Brownsville and Mexico Railway Company, and Respondent, Texas Mexican Railway Company, entered into a written contract, whereby Respondent granted to The St. Louis, Brownsville and Mexico Railway Company, upon specified rentals, "the right to operate its trains over the main line, * * * as well as the right to use jointly with the party of the First Part (Respondent) * * * real estate and all other property appurtenances as they now exist * * *, which shall be incident and necessary to the use of the said party of the Second Part (Petitioner Railway Company) for the purpose of running its passenger and freight trains over the said line of the party of the First Part between the points hereinbefore mentioned (Robstown and Corpus Christi), * * *, and said right of usage to include also the use of the terminals of the party of the First Part in Corpus Christi; and the said party of the First Part further grants to the said party of the Second Part the right to carry over its said tracks such freight, mail, express and passengers as it may desire, and to receive for its own use and compensation all revenue arising from such services, *and the further right to generally extend and transact its business as a common carrier over the said line* * * * (Emphasis ours.)

"This contract * * * shall continue for the full term of fifty (50) years from date, unless sooner terminated by the parties hereto * * *.

"It is further agreed that this contract may be terminated without giving any reason therefor, by either party, upon giving 12 months' notice of such intent to terminate the lease" (R. 145).

In certain respects, not here material, the contract was amended in 1914 (R. 146).

On May 2, 1933, Petitioner Railway Company filed its petition, under Section 77 of the Bankruptcy Act, in the District Court of the United States, Eastern Division, Eastern District of Missouri, in a proceeding theretofore filed in said court entitled "In the Matter of Missouri Pacific Railroad Company, Debtor," No. 6935, in Bankruptcy. On the same date said District Court entered an order approving said petition as properly filed (R. 108), and Petitioner Trustee has been at all times material to this suit and is now, the duly appointed, qualified and acting Trustee of The St. Louis, Brownsville and Mexico Railway Company, Debtor, in said proceeding, under Section 77 of the Bankruptcy Act (R. 14, 15).

On May 13, 1933, the Court of Bankruptcy issued its order No. 18 (R. 120), prohibiting any interference with the debtor or its properties (see page 17, *infra*), and on December 2, 1935, by Order No. 116a (R. 123) stayed all suits against the Debtor except "claims for damages caused by the operation of trains, buses or other means of transportation" (see page 17, *infra*).

On October 28, 1940, Respondent notified Petitioners that it was exercising its right to terminate and cancel said contract effective twelve months after November 1, 1940 (R. 42). The Trustee continued his operations after that date in compliance with the requirements of Section 1(18) of the INTERSTATE COMMERCE ACT; and on May 25, 1942 (R. 1), Respondent sued Petitioners in the District Court of Nueces County, Texas. In its amended petition, upon which the trial was had, Respondent prayed that it recover judgment:

"(a) Enjoining each Defendant, jointly and severally, together with the agents, servants and employees of

each several Defendant from going upon or from sending motive power and employees of either Defendant upon any track, side track or terminal of Plaintiff in the City of Corpus Christi or from Corpus Christi to Robstown in the absence of affirmative consent from Plaintiff.

"(b) That it recover its judgment, jointly and severally, against the Defendants for damages in the sum of $500.00 per day for each and every day said property of Plaintiff has been used by Defendants or either of them since November 1, 1941.

"(c) In event it be held that Plaintiff is not entitled to recover said $500.00 per day, Plaintiff then prays, in the alternative, that it recover, jointly and severally, against said Defendants the reasonable value of the use of said property to Defendants from November 1, 1941, until said property be vacated by the Defendants and unmolested possession and use be surrendered and returned to Plaintiff.

"(d) Plaintiff further prays that it recover in any event exemplary damages against the Defendants, jointly and severally, at the rate of $50.00 a day for each and every day they or either thereof have made use of Plaintiff's property as aforesaid from and after November 1, 1941" (R. 46, 47).

It is undisputed that at all times material hereto both Petitioners and Respondent were interstate carriers by railroad, subject to the provisions of the Interstate Commerce Act, 49 U.S.C., Sec. 1, et seq., 24 Stat. 397, as amended by the Act of February 28, 1920, 41 Stat. 474, and that no certificate of public convenience and necessity had been applied for or issued by the Interstate Commerce Commission permitting abandonment of Petitioners' operations over Respondent's line of railway.

The trial court overruled pleas to its jurisdiction and to

stay or dismiss (R. 69); tried the case on the merits (R. 303-1128*), and entered judgment (a) that the contract of 1904 had been cancelled and terminated, notwithstanding the absence of a certificate of public convenience and necessity by the Interstate Commerce Commission permitting the Trustee to abandon his operations under the contract, (b) awarding Respondent damages of $184,929.85 against the Trustee, (c) assessing costs, jointly and severally, against Petitioners, and (d) denying injunctive relief and exemplary damages (R. 85-91). Petitioners perfected an appeal to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, which, in all things, affirmed the judgment of the trial court (R. 199), and Petitioners' application to the Supreme Court of Texas for Writ of Error was refused (R. 212).

Specification of Errors

I.

The Court of Civil Appeals erred in affirming the trial court's judgment overruling Petitioners' pleas to the jurisdiction.

II.

The Court of Civil Appeals erred in affirming the judgment of the trial court on the merits, in that neither of said courts had jurisdiction over the subject matter of this suit.

III.

The Court of Civil Appeals erred in entering any judgment other than dismissal or stay of the suit in view of the stay orders entered in the Court of Bankruptcy.

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* Reference is to a portion of the original record omitted from the printed record by stipulation.

IV.

The Court of Civil Appeals erred in entering judgment affirming the judgment of the trial court that the trackage contract here involved had been lawfully cancelled and terminated without the Interstate Commerce Commission having first issued a certificate of public convenience and necessity permitting abandonment of the Trustee's operations over Respondent's line of railway.

V.

The Court of Civil Appeals erred in entering judgment affirming the judgment of the trial court assessing damages and costs against Petitioners in view of the exclusive jurisdiction of the Interstate Commerce Commission to determine the fair rental or compensation for the use by Petitioners of the railroad properties involved.

ARGUMENT

Point I

Exclusive jurisdiction of the subject matter of this suit is vested in the Court of Bankruptcy.

Section 77 of the BANKRUPTCY ACT provides that after the filing of a petition by a railroad for reorganization:

> "If the petition is so approved the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the Debtor and its property wherever located * * *." 11 U.S.C., Sec. 205a, as amended, 47 Stat. 1474, 49 Stat. 911, 49 Stat. 1969, and 53 Stat. 1406.

The plain meaning of this language is certainly that if the

Bankruptcy Court has exclusive jurisdiction, no other court can have any jurisdiction to hear and determine a suit involving the title to or the right or conditions of possession of the property which is *in custodia legis*, or the control of the operations of the Trustee holding the property subject to the orders of the court.

In addition to the foregoing provisions of Section 77 of the BANKRUPTCY ACT, Section 77c(2) provides that:

> "The Trustee or Trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the Judge and consistently with the provisions of this section, all of the powers of a Trustee appointed pursuant to Section 72 or any other section of this Title, and, to the extent not inconsistent with this Section, if authorized by the Judge, the powers of a Receiver in an equity proceeding, and, subject to the control of the Judge and the jurisdiction of the Commission as provided by Chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the Debtor."

In ISAACS v. HOBBS TIE & TIMBER COMPANY, 282 U.S. 734, the court, opinion by MR. JUSTICE ROBERTS, said:

> "Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. Mueller v. Nugent, 184 U.S. 1, 14, 46 L. Ed. 405, 411, 22 S. Ct. 269. The title and right to possession of all property owned and possessed by the Bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the court sits. Robertson v. Howard, 229 U.S. 254, 260, 57 L. Ed. 1174, 1177, 33 S. Ct. 854; T. E. Wells & Co. v. Sharp, 125 C.C.A. 609, 208 Fed. 393; Galbraith v. Robson-Hilliard Grocery Co.,

133 C.C.A. 46, 216 Fed. 842, 32 Am. Bankr. Rep. 752. It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. Robertson v. Howard, 229 U.S. 254, 259, 260, 57 L. Ed. 1174, 1177, 33 S. Ct. 854, supra; Re Wilka (D.C.), 131 Fed. 1004. When this jurisdiction has attached the court's possession cannot be affected by actions brought in other courts. White v. Schloerb, 178 U.S. 542, 44 L. Ed. 1183, 20 S. Ct. 1007; Murphy v. John Hofman Co., 211 U.S. 562, 53 L. Ed. 327, 29 S. Ct. 154; Dayton v. Stanard, 241 U.S. 588, 60 L. Ed. 1190, 36 S. Ct. 695. This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction, is competent to hear and determine all questions respecting title, possession and control of the property. Murphy v. John Hofman Co., 211 U.S. 562, 53 L. Ed. 327, 29 S. Ct. 154, supra; Wabash R. Co. v. Adelbert College, 208 U.S. 38, 52 L. Ed. 379, 28 S. Ct. 182; Harkin v. Brundage, 276 U.S. 36, 72 L. Ed. 457, 48 S. Ct. 268."

There can be no doubt that the rights granted to Petitioner Railway Company under the trackage agreement of 1904 (R. 137-145) were *property* rights of the bankrupt which passed to the Trustee upon the approval of the Debtor's petition for reorganization under Section 77 of the Act, and that the existence, extent, validity and effect of the rights granted by the contract should be adjudicated in the Court of Bankruptcy alone, for as was said in EX PARTE BALDWIN, 291 U.S. 610, opinion by MR. JUSTICE BRANDEIS:

"* * * where a court of competent jurisdiction has,

through its officers, taken property into its possession, the property is thereby withdrawn from the jurisdiction of other courts. * * * The jurisdiction in such cases is exclusive of the jurisdiction of other courts, although otherwise the controversy would be cognizable in them. Murphy v. John Hofman Co., 211 U.S. 562, 569, 29 S. Ct. 154, 53 L. Ed. 327. In bankruptcy, this rule applies regardless of whether the property is located in the district in which the bankruptcy proceedings originated * * * *."

In CONTINENTAL BANK & TRUST COMPANY v. CHICAGO R. I. & P. RY. CO., 294 U.S. 648, the Court, opinion by MR. JUSTICE SUTHERLAND, held that a court of bankruptcy had properly enjoined a sale, under a mortgage and deed of trust, of securities pledged as collateral by the debtor railroad. The Court said:

"* * * As has already been shown, the equity in the collateral remaining in the railroad company is property; and over this property, wherever located, the federal district court is given exclusive jurisdiction of the precise language of Section 77, just quoted. As a necessary consequence of that jurisdiction, the court must have the power to preserve and safeguard the property for the benefit of the trust estate so far as that is compatible with the rights of the pledgees. Jurisdiction over the property wherever located carries with it jurisdiction to enjoin, in a proper case, interferences with the property * * * *."

The rights granted under the trackage agreement of 1904 were no less property of the bankrupt than the equity in the collateral remaining in the railroad company in the CONTINENTAL BANK & TRUST COMPANY case, supra. Moreover, that case did not involve *operations* of the Trustee. The principles there announced must apply with even greater

force to this case where there is at stake the very operation by the Trustee of the property of the Debtor. In this case, the relief sought (R. 36-47) was in essence a judicial determination that the contract of 1904 had been cancelled and that the property rights granted under that contract were no longer in force. Respondent further sought (R. 46) an injunction against the Trustee's operations, compensatory damages and exemplary damages (R. 47) for the Trustee's use of the property, which use was subject to the control and direction of the court of bankruptcy. Moreover, the Trustee could not lawfully cease or abandon such use of the property without the Interstate Commerce Commission having first issued a certificate of public convenience and necessity permitting such abandonment, as will be more particularly shown hereafter (infra, pp 20 to 24). We can conceive of no case in which there was sought a more direct interference with the exclusive jurisdiction of the Court of Bankruptcy, the operations of the Trustee in Bankruptcy or the rights of the creditors of the Bankrupt, than the case pleaded by Respondent in the trial court.

State Courts, other than those of Texas, have readily recognized the rule of exclusive jurisdiction in the bankruptcy court. In PALMER v. LARCHMONT MANOR COMPANY, 30 N.E. (2d) 599, 284 N.Y. 288, Palmer, the Trustee in Bankruptcy of the New Haven Railroad, brought an action in the State Court to compel the determination of a claim to real property. The complaint was dismissed by the trial court on the ground that the New York court had no jurisdiction over the subject matter of the litigation in view of the bankruptcy. The Court of Appeals of New York said:

> "Upon approval of the petition and upon entry of an order thereon, the bankruptcy court had exclusive jurisdiction of the debtor and its property wheresoever sit-

uated. National Bankruptcy Act, Sec. 77, Sub. a, 11 U.S.C.A., Sec. 205, Sub. a. The trustees took possession of the real property in suit following their appointment. That possession was similar to that of a trustee in an ordinary bankruptcy proceeding upon adjudication. Isaacs v. Hobbs Tie & Timber Co., 282 U.S. 734, 737, 51 S. Ct. 270, 75 L. Ed. 645; National Bankruptcy Act, Sec. 77, Sub. c. Par. (2), 11 U.S.C.A., Sec. 205, Sub. c(2). The trustees were powerless to confer, by bringing suit, jurisdiction upon our courts. Isaacs v. Hobbs Tie & Timber Co., supra."

In the opinion of the Court of Civil Appeals in the case at bar it was said:

> "The relief prayed for by the Tex-Mex Railway and granted by the court below was an award of compensation for the use of its property (for a specified period of time) by another *having no contract rights* authorizing such use." (Emphasis ours.)

The granting of any relief to Respondent in this cause was, in all events, dependent upon the finding that Petitioners had no contract rights authorizing the use of Respondent's property. Thus, the courts below necessarily decided the question of the existence, extent and validity of the rights granted Petitioner Railway Company under the contract of 1904. That was the precise question that the State courts had no jurisdiction to determine. In addition to this, the Court of Civil Appeals entirely ignored the fact that the present suit was not merely one for compensatory damages, but (R. 36-47) it was also a suit for injunction, which, if granted, would have prevented the Trustee from making any use of the property involved. The Court of Civil Appeals obviously failed to grasp the fact that the jurisdiction of the State court was determined by the subject matter

and main purpose of the suit (cancellation of the contract and injunction), and that even if the State court did have jurisdiction to assess damages against Petitioner, the cancellation of the contract or the injunction, if granted, would vitally affect the debtor, the trustee and his operations. Although injunctive relief was denied, the prayer for an adjudication that the contract was ended was granted (R. 90) and that for injunction was never dismissed for lack of jurisdiction, but was judicially determined by denying such relief (R. 91). It is plain that if the State courts had jurisdiction to deny the prayer for injunction, they also had jurisdiction to grant it.

The State courts did not have jurisdiction of the main subject matter and purpose of the suit. In EX PARTE BALDWIN, 291 U.S. 610, opinion by MR. JUSTICE BRANDEIS, the Court said:

> "It is true that the Investment Company seeks, in addition to the adjudication of the forfeiture of the right of way, damages 'in the sum of $150,000' from the two railways and 'from the trustees in their said capacity as trustees' for failure to maintain the daily schedule of passenger trains set forth in the contract. This prayer of the complaint is no bar to staying the suit in the state court. The exclusive jurisdiction of the bankruptcy court is determined by the main purpose of the suit, which is to have the forfeiture declared and the alleged cloud upon title removed. The claim for damages is merely an incident."

The fact that the trial court did not allow the injunction or award the exemplary damages sought cannot change the nature of the suit, nor can the fact that Petitioners answered before filing their motions to stay and their pleas to the jurisdiction of the trial court give any comfort to Respondent. As was said in ISAACS v. HOBBS TIE & TIMBER CO., supra:

> " * * * The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors. This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession. Whitney v. Wenman, 198 U.S. 539, 25 S. Ct. 778, 49 L. Ed. 1157; In re Schermerhorn (C.C.A.), 145 F. 341. Indeed, a court of bankruptcy itself is powerless to surrender its control of the administration of the estate."

See also PALMER v. LARCHMONT MANOR CO., supra, page 10, holding that the trustee cannot, even by choice, confer jurisdiction on any other court.

We revert to the proposition that the rights granted Petitioner Railway Company under the trackage agreement of 1904, and subsequently vested in the Trustee, constituted property of the debtor in the possession of the Trustee and within the exclusive jurisdiction of the court of bankruptcy. The fact that the rights were granted by contract or lease and not by deed is immaterial, for as was said by MR. JUSTICE REED in WARREN v. PALMER, 310 U.S. 132:

> "It is immaterial what title the debtors had, whether a lease or a fee. The physical property covered by the lease was in the custody of the Connecticut court by virtue of the provision of Section 77a. By virtue of Subdivisions 77c(10) and 77c(6), it is clear that leaseholds are in some instances to be operated by the lessee's trustees."

The courts below assumed jurisdiction over a claim by which it was sought to interfere directly with and to adjudicate the title to the property of the debtor, in possession of the Trustee in Bankruptcy; one which would impede the effectuation of a plan of reorganization, and one in-

volving matters of national interest, the determination of which is vested exclusively in the Interstate Commerce Commission. The express provisions of Section 77 of the BANKRUPTCY ACT and the authorities cited make it clear that the State courts had no jurisdiction to hear or determine such a case. The interest of the public in the operation of a bankrupt railroad, as well as the interest of creditors in the due administration of the estate and the preservation of their rights, require that on at least some of the matters involved the jurisdiction of the court of bankruptcy be exclusive.

The Respondent has urged that as to the Trustee, Section 66 of the JUDICIAL CODE,[1] 28 U.S.C., Sec. 125, authorizes suit in the State court, and that General Order No. 18 entered by the court of bankruptcy (infra, page 17), restraining all persons, firms, or corporations from interfering with, in any manner whatsoever, any portion of the railroad's properties and premises belonging to or in possession of any of the debtors, or from taking possession of, or in any way interfering with the same, etc., is in conflict with Section 66 of the JUDICIAL CODE.

Section 66 of the JUDICIAL CODE does not confer on any other court jurisdiction of a suit of this kind, directly affecting the possession, control, or management of the property, either in the hands of the trustee or the debtor. In AMERICAN BRAKE SHOE & FOUNDRY COMPANY v. INTERBOROUGH RAPID TRANSIT COMPANY, 10 Fed. Supp. 512,

[1] Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice."

applications were made by the City of New York and others for leave to sue the Interborough, its Receiver, and others, in the State Court for a declaratory judgment that cessation of the operation of certain through trains over elevated and subway routes would be a breach of Interborough's obligations to the city; and, further, for an injunction against such threatened breach and specific performance by the Interborough and its Receiver of their alleged contractual obligations, although without enforcement thereof during the receivership. The Court said:

> "Section 66 of the Judicial Code is the chief reliance on behalf of the city in its asserted claim. In urging that Application 52 is an 'act or transaction' within the meaning of this provision, the city, in my opinion, misconceives the scope of the enactment. As uniformly interpreted by the courts, its sole purpose is to make federal receivers amenable to state court suits on causes of action arising out of the ordinary operation of the company in receivership. Actions for personal injuries caused by the negligent operation of a common carrier are a familiar example. Gableman v. Peoria, Decatur & Evansville R. R. Co., 179 U.S. 335, 21 S. Ct. 171, 45 L. Ed. 220 (1900). On the other hand, causes directly affecting the administration of the receivership res, or property rights therein, do not fall within the provision; to allow such suits to be instituted without leave of the court which has the property in its custody would divest it of its exclusive jurisdiction thereover and lead but to conflict and confusion in administration. Such was not the legislative purpose.
>
> "* * * Section 66 does not embrace suits intended to establish liens or possessory or ownership rights in the receivership res. Field v. Kansas City Refining Co., 296 F. 800 (C.C.A. 8th, 1924), cert. denied 266 U.S. 618, 45 S. Ct. 98, 69 L. Ed. 471; Id., 9 F. (2d) 213 (C.C.A. 8th, 1925), cert. denied 271 U.S. 676, 46 S. Ct. 489, 70

L. Ed. 1146; Buchannon & N. R. Co. v. Davis, 135 F. 707 (C.C.A. 4th, 1905); J. I. Case Plow Works v. Finks, 81 F. 529 (C.C.A. 5th, 1897). Cf. Wabash Railroad Co. v. Adelbert College, 208 U.S. 38, 54, 28 S. Ct. 182, 52 L. Ed. 379 (1908); Edward Murphy, 2d, v. John Hoffman Co., 211 U.S. 562, 569, 29 S. Ct. 154, 53 L. Ed. 327 (1909)."

The Circuit Court of Appeals on the opinion below affirmed the judgment of the District Court (76 Fed. (2d) 1002), and this Court denied certiorari (295 U.S. 760).

Section 66 of the JUDICIAL CODE can have no application to the case at bar. This is a suit in which it is sought to interfere directly with and to adjudicate the title to the property of the debtor, and to control the trustee by injunction. That is a far cry from suing the trustee for damages in a negligence case.

Point II

The stay orders entered in the Court of Bankruptcy prohibit the prosecution of this suit in the State court.

The only exception to exclusive jurisdiction of the Court of Bankruptcy is the proviso of Subsection (j) of Sec. 77 of the Act, 49 Stat. 911, 922, 11 U.S.C., Sec. 205 (j), reading as follows:

> "In addition to the provisions of Section 29 of this Title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: *Provided*, That suits or claims for damages caused by the operation of trains, buses, or

other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated."

The proviso just quoted did not appear in the original Act. 47 Stat. 1467, Sec. (1). Conformably to the statute then in force, on May 13, 1933, the court of bankruptcy issued its stay order No. 18 (R. 120, 122), providing among other things:

"All persons, firms or corporations whatsoever and wheresoever situated * * * are hereby restrained and enjoined from interfering with * * * in any manner whatsoever any portion of the * * * railroad's properties and premises belonging to or in the possession of any of the Debtors, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner to prevent the discharge by the Debtors of their duties in the operation of said property and business under orders of this court."

So far as the present suit is one against the Trustee, it seeks to interfere, by injunction and cancellation, with property in the possession of the Trustee, and to interfere with the discharge of the rights and duties of the Trustee in the operation of the property. On the other hand, so far as the suit is one against the debtor it will be noted that subsequent to the amendment of Subsection (j) by the Act of August 27, 1935, 49 Stat. 922, the court of bankruptcy, on December 2, 1935, entered its General Order 116(a) (R. 124, 125), which is applicable and reads in part:

"That the commencement or continuation of suits against any of the debtor companies is hereby stayed and enjoined until after final decree entered in these proceedings; provided, however, that suits or claims

for damages caused by the operations of trains, buses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction, and any order heretofore staying the prosecution of any such causes of action or appeal is hereby vacated."

Obviously, Order 116(a) was entered by the court of bankruptcy to conform to and comply with the amendment of August 27, 1935. Congress and the courts have long recognized the injustice of forcing litigants with claims for damages to freight, for personal injuries, or property damage, to bring their suits against trustees in bankruptcy or receivers in equity in forums far removed from the claimant's residence and the scene of the accident or loss. The plain purpose of the proviso, added on August 27, 1935, and recognized in Order 116(a), was to bring the Bankruptcy Act into undeniable conformity with Section 66 of the JUDICIAL CODE by permitting the prosecution in local courts of the normal type of freight loss and damage claims, personal injury claims and other claims based upon negligence of the trustee's agents in their operation of his trains or buses. It is clear that neither the Act nor the proviso contained in the later Order was intended to apply to a suit to enjoin the trustee from operating a railroad property, or to a suit to try the Trustee's title to property claimed by him and previously in the possession of the debtor or to a suit to assess damages for the Trustee's use of property under an allegedly invalid or terminated contract. Section 77j on its face has no application to the Trustee and does not broaden Sec. 77a or Sec. 77c(2), supra, and in no way enlarges or conflicts with such Order No. 18.

There is no apparent reason, by interpretation, to broaden the provisions of the proviso inserted in this statute on August 27, 1935, to permit the prosecution of such a suit in the State court. *Moreover, an integral part of Respondent's*

suit, if not its prime object, was the demand for an injunction staying the Trustee's operations, not in any sense of the word a claim for damages. As we have already pointed out, the matter of jurisdiction is determined by the relief sought and not by the relief ultimately granted. EX PARTE BALDWIN, supra.

IN RE CHICAGO AND E. I. RY. CO., 121 Fed. (2d) 785, certiorari denied, 314 U.S. 653, the Circuit Court of Appeals for the Seventh Circuit considered the scope of Section 77, Subsection (j). In holding that the proviso permitted prosecution in the State court of a negligence action arising out of a train wreck the court said:

> "What reason or reasons did Congress have for making this exception? We can hardly call it speculation when we suggest several which at once present themselves.
>
> "*It evidently placed personal injury claims on a different footing from other claims, whose origin was traceable to an agreement, express or implied.* It is not inconsistent with historical analogies to place injuries to the person in a class different from all other kinds of claims. This Act gives to holders of such claims preference, so far as jurisdiction is concerned, over claimants holding contractual claims. It permits the claimants to sue in the state court and in any Federal court, as well as the one which has jurisdiction of the debtor's estate.
>
> "The plaintiff can thus have the benefit of a jury trial, if he so desires. This in itself is sufficient grounds for making a distinction between claims arising out of personal injuries and other kinds, where a jury trial is not thought so essential.
>
> "Giving jurisdiction to local courts of personal injury cases permits the claimant to sue in local jurisdictions, thus avoiding burdensome cost and long delays which in some instances might be said to be a denial of justice.
>
> "Whatever may have been the reasons, it is clear that the Congress intended to and did make special provision

> for personal injury cases arising out of the operation of trains. And there is no clear and sufficient reason advanced for dividing the list of such personal injury claims into those which arose before the adjudication and those whose claims occurred subsequently." (Emphasis ours.)

See also JENNINGS v. PUBLIC UTILITY COMMISSION, 14 Atl. (2nd) 882, and ELDRIDGE v. WHITE & BLACK RIVER VALLEY RY. CO., 109 S.W. (2d) 658.

This case is certainly not one of the type contemplated by Congress in adopting the proviso of sub-section (j) of Sec. 77 of the Act, but is based on a claim whose origin is directly traceable to an express agreement, the contract of 1904, and is a suit to secure a judicial determination of property rights of the trustee and for injunction to stop his operations.

Point III

The trackage contract here involved cannot be lawfully or effectually terminated in the absence of a certificate of public convenience and necessity, issued by the Interstate Commerce Commission, permitting the abandonment of Petitioners' operations authorized by and conducted under said contract.

Paragraph (18) of Section 1 of the Interstate Commerce Act (originally enacted by the Act of February 28, 1920, 41 Stat. 477, and amended by the Act of September 18, 1940, 54 Stat. 899), reads in part as follows:

> " * * * and no carrier by railroad, subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment, * * * "

Therefore, since 1920, it has been unlawful for any common carrier by railroad, subject to the Interstate Commerce Act, including the Petitioners, to abandon all or any portion of its line of railroad, or the operation thereof, unless and until such a certificate shall first have been obtained from the Interstate Commerce Commission. The penalty provided for violation of Paragraph (18) of said section, *applying not only to corporations but also to their trustees*, agents, officers and directors, is a fine of not more than $5,000.00, or imprisonment for not more than three years, or both. 49 U. S. C., Sec. 1 (20). 41 Stat. 478.

The Court of Civil Appeals, in its opinion, recognized (R. 194) that Petitioners could not lawfully abandon operations under the trackage agreement, but holds that, nevertheless, the contract "was legally terminated and cancelled as of October 31, 1941." This results in the absurd conclusion that Respondent could, at will, terminate the contract of 1904 *in part* (as to the consideration to be paid for the exercise of the rights granted) *but not in whole*, and could treat Petitioners as trespassers forbidden by law to leave the property trespassed upon. This conclusion is not sustained by the authorities.

The necessary effect of Sec. 1 (18) of the INTERSTATE COMMERCE ACT was either (a) to nullify completely the provision of the 1904 contract for termination on twelve months notice, or (b) to require, in addition to such notice, the issuance by the Commission of a certificate of public convenience and necessity authorizing abandonment of Petitioners' operations as a condition precedent to the exercise by either party of the right to terminate the contract. This position is sustained by the decision in WARREN v. PALMER, 310 U.S. 132, in which MR. JUSTICE REED said:

> "Railroad reorganization in bankruptcy is a field completely within the ambit of the bankruptcy powers

> of Congress. Under the commerce clause of the Constitution Congress likewise has exercised its power to provide for the continued operation of interstate railroads such as petitioner. The fact that the operator operates under a lease does not affect the force of the requirement that the operation must continue until a certificate permitting abandonment is issued by the Interstate Commerce Commission. The judicial functions of the bankruptcy court and the administrative functions of the Commission work co-operatively in reorganizations."

It is clear that no constitutional question of interference with contract rights is involved, since the constitutional prohibition against laws impairing the obligation of contracts is a limitation on the power of the States and not on the power of the Federal government. LOUISVILLE & NASHVILLE R. Co. v. MOTTLEY, 219 U.S. 467.

If, as pointed out in the MOTTLEY case, Congress, in the course of regulating Interstate Commerce, has power to destroy utterly a private contract which conflicts with such regulations, it follows that Congress may add, as a condition of terminating an existing contract, a further requirement or condition, namely, securing a certificate of public convenience and necessity permitting the abandonment of the operations carried on pursuant to the contract prior to exercising the right of termination. Of course, if Respondent, as we contend, could not cancel the contract without the issuance of the necessary certificate by the Interstate Commerce Commission, then the contract is still in force, and the judgment for damages, not based on the consideration provided by the contract, is wrong.

A well considered decision in a parallel case is that of the Supreme Court of New Mexico, in TAYLOR v. SANTA FE, ETC., Co., 34 Pac. (2d) 1102, 1104, 38 N.M. 457. The two

railroads there involved were both, as here, engaged in interstate commerce. Prior to April 17, 1931, the San Juan "possessed perpetual trackage over the line of appellant (the Santa Fe). On that day * * * an instrument called a 'reconveyance, release and cancellation' was executed by the San Juan Railroad, purporting to reconvey to appellant * * * all its trackage rights over appellant's line." Subsequently, Taylor, the receiver of the San Juan, sued appellant to enjoin it from interfering with him in the operation of trains over the line which had been subject to such trackage rights. From a decree for the receiver the owning line appealed. The Court said:

> "The necessary effect of the attempted reconveyance of April 17, 1931, would be an abandonment of operations by the San Juan Railroad without the consent of the Interstate Commerce Commission, prohibited by, and made a penal offense under, Federal statute. It is manifest, under the foregoing principles, that the agreement was ineffective to divest the San Juan Railroad of the trackage rights here contested. Appellant can claim no rights thereunder, and the trial court rightly refused to recognize it as a defense to this suit."

It will be observed that in the TAYLOR case the Court held that the reconveyance of the trackage rights was ineffective for lack of a certificate by the Interstate Commerce Commission, notwithstanding the fact that the parties had undertaken *by mutual agreement* to cancel the trackage rights. The agreement of the San Juan was evidenced by its execution of the so-called reconveyance; that of appellant by its acceptance thereof, plus its subsequent reliance thereon as a defense to the suit. It was held, nevertheless, that a certificate by the Interstate Commerce Commission that public convenience and necessity permitting the abandonment of the operations of the

San Juan was so indispensable that the parties, in the absence of such a certificate, could not validly enter into the contract evidenced by the so-called reconveyance. In the present case, for the same reason, it should be held that *one party* to the trackage contract of 1904 may not, *without the consent of the other party*, terminate that contract in the absence of the required certificate.

In the briefs and arguments before the State courts, Respondent took the position that the necessary certificate of the Interstate Commerce Commission should have been procured by Petitioners. The Court of Civil Appeals, in its opinion, said:

> "The present case is distinguishable upon the facts. It appears that the Tex-Mex Railway made application to the Interstate Commerce Commission for permission to terminate the contract of November, 1904, in accordance with the provisions thereof. This application was returned by the Secretary of the Commission, together with his statement that:
>
> 'The Commission is without authority to consider an application of the nature submitted by you. Its jurisdiction under Sec. 1(18) of the Interstate Commerce Act would extend only to abandonment of operation by the St. Louis, Brownsville & Mexico Railway Co.
>
> 'I note that on November 1, 1940, notice in accordance with the terms of the trackage agreements was written to the Brownsville Company of the intent of the Texas Mexican to cancel the contract. No application has been filed by the Brownsville Company. Accordingly the application and copies are returned herewith.'
>
> "Since receipt of this communication neither the Tex-Mex Railway, nor the Brownsville Railway (or its Trustee) have in any way sought to invoke the juris-

diction of the Interstate Commerce Commission with reference to this controversy" (R. 193).

The Court will observe that Respondent's "application" (R. 175-185), was not an application for a certificate permitting an abandonment, and that Respondent admits that no such application was made and no such certificate was issued (R. 13). A letter of the Secretary of the Interstate Commerce Commission stating that the Commission has no authority to consider an application *for permission to terminate a contract*, is not a holding by the Commission, or a court, or, for that matter, by the Secretary, that the Interstate Commerce Commission would not have had jurisdiction of an application by Respondent *for a certificate of public convenience and necessity permitting abandonment* of the Trustee's operations over the lines in question. In fact, this court long ago held that such certificate, if in fact in the public interest, could have been secured upon the application of any party having a proper interest in the subject matter. ATCHISON, ETC., RY. CO. v. RAILROAD COMMISSION, 283 U.S. 380. If the respondent could furnish the necessary service to the public and desired to put a stop to the Trustee's operations over its line it certainly had a sufficient interest to enable it to prosecute an application for a certificate permitting the abandonment.

In Respondent's brief filed in opposition to the petition for certiorari, Respondent asserts (p. 26) that it could not have filed an application for such a certificate because "this court seems to have already held between adversely interested carriers that one not conducting or proposing to conduct the operations is not a party having proper interest to make an application with respect to the other's operations or not under Sec. 1(18) of said Act."

The cases cited by Respondent do not sustain t[illegible] conclu-

sion. In TEXAS & P. v. GULF C. & S. F., 270 U.S. 266, the Texas & Pacific Railway Company brought a suit to enjoin the construction of new trackage by the Gulf, Colorado & Santa Fe Railway Company. There was no question of any operation by one of the roads over the line of the other. In defending, the G. C. & S. F. argued that since there was no finding by the Interstate Commerce Commission that the trackage in question constituted an extension, the District Court did not have jurisdiction to enjoin the construction of the line. The language of MR. JUSTICE BRANDEIS, quoted by Respondent:

> "But a party in interest, who is opposed to the construction, is not authorized by the Act to initiate before the Commission any proceeding concerning the project. If application for a certificate has been made, he may appear there in opposition,"

must be construed in the light of the circumstances of that case. Sec. 1(20) of the Interstate Commerce Act provides that "any construction, operation or abandonment contrary to the provisions of this paragraph, or of Paragraph (18) or (19) of this Section, may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission * * *, or any party in interest * * *."

With this explicit statutory remedy for redress against unauthorized construction, it cannot well be said that an interested carrier or any other interested party could apply (in advance of proposed construction by some other carrier) for a certificate or finding by the Commission that such proposed or threatened construction or abandonment would be unlawful or contrary to the public interest. In the case at bar no unlawful act has been committed by Petitioners so as to authorize suit in the District Court under the provisions of Sec. 1(20), but Respondent as an interested party

desiring to terminate the Petitioners' right to use the property, and incident to this, the trackage agreement of 1904, could certainly, under the holding in ATCHISON, TOPEKA & SANTA FE RY. CO. v. RAILROAD COMMISSION, supra, apply to the Commission for a certificate of public convenience and necessity permitting the abandonment of Petitioners' operations. Instead, it chose, by a suit for injunction and damages in the State Court, to seek an order requiring Petitioners, in effect, to abandon a lawful operation. If the injunctive relief thus sought in the State Court had been granted, and the injunction obeyed, any interested party, pursuant to Section 1(20) of the Interstate Commerce Act, could have enjoined Petitioners in the Federal District Court from abandoning the operations enjoined by the State Court. Could the absurdity of Respondent's contentions be more plainly exposed?

Respondent also cites POWELL v. UNITED STATES, 300 U.S. 276. In that case the Seaboard made a contract with the lessees of a track extending from Ft. Benning Junction to Ft. Benning for the handling of traffic from Seaboard's station at Ft. Benning Junction into Ft. Benning for a fixed sum per car. The Seaboard then published joint through rates to Ft. Benning. Powell, Receiver of the Central of Georgia, sought to have the rates cancelled. They were cancelled by the Interstate Commerce Commission. Seaboard brought suit to have the order cancelling the rates set aside. This action was properly heard before a three-judge District Court under the URGENT DEFICIENCIES ACT, 28 U.S.C. 47. The Receiver intervened in the proceeding, making allegations appropriate for a complaint in a suit under Section 1(20) of the Interstate Commerce Act to prevent a violation of Sec. 1(18) of the Act, that is, an unlawful extension of its facilities by the Seaboard. This Court held that the three-judge District Court had jurisdiction of Seaboard's

suit, but that the Central's Receiver had mistaken his remedy as only a District Court (one judge) had jurisdiction of suits to enjoin violations under Section 1(20) of the Act.

Certainly the Commission would not have had jurisdiction over a proceeding by the Central to secure a certificate of public convenience and necessity permitting the Seaboard to abandon operations between Ft. Benning Junction and Ft. Benning, for it had a complete remedy, either to intervene if Seaboard made the application to the Interstate Commerce Commission, or to sue in the District Court to enjoin the operations under Section 1(20).

If a municipality and a State Railroad Commission, representing the public, have a sufficient interest, as held in the LOS ANGELES case, to enable them to file and prosecute an application for an abandonment certificate, it would be hard to demonstrate that the owner of the property used in the operation lacks the requisite interest.

The trackage contract of 1904 contained two principal provisions:

> (1) A grant by Respondent to Petitioner Railway Company of the right to operate the latter's trains over the former's property; and
>
> (2) An obligation by the latter to pay the former for the exercise of the rights so granted, according to the formula contained in the contract.

Section 1(18) of the Interstate Commerce Act prohibits Respondent (and all others) from doing any act which would prevent Petitioners from exercising the rights so granted. The obligation to pay according to the contract formula is inseparable from the granted right to operate. The decision below is reducible to the single proposition that Respondent, without subtracting a thing from the rights which

in 1904 it granted to one of the Petitioners has succeeded in cancelling out all those (and only those) provisions of the contract prescribing the amounts payable. That proposition is patently unsound.

It stands conceded that Petitioners may not abandon the use of the property without a certificate from the Interstate Commerce Commission. If they are prohibited by law from abandoning its possession and use they must have a right to possess and use the property. If there is such a right in Petitioners what is its origin? Such right of possession and use does not rest on ownership because Petitioners concede that Respondent is the owner of the property. Only two bases upon which such rights might rest are apparent: The trackage contract of 1904 and the Transportation Act, 1920, as amended. The rights of possession and use must rest either (a) on the contract of 1904 or (b) on the Transportation Act, 1920, or (c) partly on the contract and partly on the statute. If those rights are claimed to depend in any degree upon the Act of 1920 or any of its amendments two further questions immediately arise. First, what are the words of the statute which create or give rise to a trackage right enjoyed by one railroad in the property of another; and second, why is it that the statute, passed in 1920, did not give rise to any such right until the end of October, 1941?

The contract of 1904 conferred no right to effect a partial termination of the agreement by notice or otherwise. The plain language of the contract was that by the requisite notice "this contract may be terminated." It seems to us to be plain that until the Respondent is able in some way to destroy the rights of possession and use granted by it in 1904 it cannot successfully contend that the contract then made has been terminated.

It is respectfully submitted that the contract of 1904 is

still in force; that, therefore, the compensation fixed by that contract and which Petitioners have at all times stood ready to pay (R. 1, 7), is the measure and the only measure of the amounts due Respondent for the use of its property.

Point IV

Jurisdiction to determine the fair rental or compensation for the use by one Interstate Carrier of a line of railway owned and used by another Interstate Carrier is vested exclusively in the Interstate Commerce Commission.

The administration of a bankrupt railroad corporation occurs in two forums. As to matters affecting the rights of creditors and the effectuation of a fair and orderly plan of reorganization, the jurisdiction of the court of bankruptcy is complete and exclusive; but in matters affecting the public interest, the public convenience in, and necessity for, adequate and continuous rail service, the jurisdiction of the Interstate Commerce Commission is paramount.

The intertwining of the interests of creditors and the shipping and travelling public is recognized by the Bankruptcy Act itself and is pointed out in PALMER v. MASSACHUSETTS, 308 U.S. 79, opinion by MR. JUSTICE FRANKFURTER, where the Court said:

> "The judicial process in bankruptcy proceedings under Sec. 77 is, as it were, brigaded with the administrative process of the Commission. From the requirement of ratification by the Commission of the trustees appointed by the court to the Commission's approval of the court's plan of reorganization the authority of the court is intertwined with that of the Commission. Thus, in Sec. 77, Sub. c, and Sec. 77, Sub. o, the power of the district courts to permit abandonments is speci-

fically conditioned on authorization of such abandonments by the Commission."

Although the jurisdiction of the court of bankruptcy over the debtor and its properties is made exclusive by Section 77, Sub. a of the Bankruptcy Act (11 U.S.C., Sec. 205a), the paramount jurisdiction of the Interstate Commerce Commission over matters affecting the public interest is recognized by other sections of the same Act. Sub. c(1) requires the appointment of trustees of the debtor railroad to be ratified by the Interstate Commerce Commission. Sub. c(2) gives the Commission supervision over the compensation paid to trustees and their counsel. Sub. c(3) permits the issuance of trustees' certificates only with the Commission's approval. Sub. c(10) empowers the Commission to set up the accounts for the allocation of earnings among the various portions of the debtor's line. Sub. c(12) gives the Commission supervision over allowances made to various parties in interest in connection with the reorganization proceedings. Subs. d and e give the Commission control over any proposed plan of reorganization.

The jurisdiction of the Commission over the abandonment of any line of railroad by an interstate carrier is expressly recognized in the Bankruptcy Act. Sec. 77, Sub. o, 11 U.S.C., Sec. 205(o), reads in part as follows:

> "The trustee * * * shall determine what lines * * * should be abandoned * * * during the pendency of the proceedings, in the interest of the debtor's estate and of ultimate reorganization, but without unduly or adversely affecting the public interest, and shall present to the judge petitions * * * for authority to abandon * * * any such property; and upon order of the judge made after a hearing * * * authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by Chap.

I of Title 49, as amended, February 28, 1920, or as it may be hereafter amended, the trustee * * * shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment * * * in accordance with the order of the judge * * * ."

It might be argued that where the public interest in the operations of an interstate carrier by rail is concerned, Congress, by the Interstate Commerce Act, has completely occupied the field of regulation c.f., HILL v. FLORIDA, —— U.S.——, 89 L. Ed. 1258. However, it does not seem to us to be necessary to press the argument that far, and it may well be that the Court would not hold that Act to occupy the field as completely as the Labor Acts.

Respondent has contended, notwithstanding its prayer for injunction and exemplary damages, that the main purpose of its suit was to establish and secure just compensation for the use of its properties. If that in fact be the nature of its case it none the less is one which affects the public interest in the financial structure and responsibility and the continued ability to furnish service as to each of the carriers involved. Jurisdiction over the determination of such compensation for use under a trackage agreement is vested exclusively in the Interstate Commerce Commission.

In TRANSIT COMMISSION, ET AL., v. UNITED STATES, 289 U.S. 121, the Long Island Railroad was using certain tracks of the Pennsylvania Railroad under a trackage agreement. Both carriers sought and secured from the Interstate Commerce Commission a certificate of public convenience and necessity authorizing the user's operations and specifying the approved rental.

The New York Transit Commission contended that under the New York railroad law it was the only body which had jurisdiction to approve a contract covering operations by

one railroad over the lines of the other, and that Section 1 (18) of the INTERSTATE COMMERCE ACT did not apply to railroad operations under trackage rights. This Court held that the jurisdiction of the Interstate Commerce Commission was exclusive, and said:

> "So far as concerns the purpose to be attained by this legislation (the Transportation Act of 1920), there is no room for a distinction between unjustifiable expenditures for the construction or operation of new mileage on the one hand and inadequate rentals or extortionate exactions under trackage agreements on the other. The reasons for the exertion of federal authority, to the exclusion of state regulation, apply with like force to both. The Act, including Paragraph (18) (dealing with certificates of public convenience and necessity for construction of lines or abandonment of operations), and related provisions, is construed to make federal authority effective to the full extent that it has been exerted and with a view of eliminating the evils that Congress intended to abate.
>
> " * * * * On the taking effect of the Transportation Act the state commission was stripped of power to prescribe terms for such operation. The authority of the Interstate Commerce Commission is paramount and, in respect of the operation and agreement under consideration, it is necessarily exclusive." (Parenthetical insertion ours.)

The Court of Civil Appeals, in its opinion in the present case, attempts to distinguish the TRANSIT COMMISSION case, saying that Respondent's "application for permission to terminate the contract of 1904" was denied and that no party to the case had thereafter sought "to invoke the jurisdiction of the Interstate Commerce Commission with reference to this controversy." The Court of Civil Appeals, from such statement, concludes that since the Interstate Com-

merce Commission had taken no affirmative action which would conflict with the action of the trial court, the trial court had jurisdiction of the controversy. The Court of Civil Appeals did not cite any authority in support of this conclusion. We suppose the court had in mind that line of cases holding that until Congress exercises its power to regulate certain phases of interstate commerce the States may exercise their regulatory powers. In this instance, however, the Congress *has* legislated upon the subject, and *has* given the Interstate Commerce Commission exclusive regulatory powers over trackage agreements, and the fairness of rentals thereunder. The jurisdiction of the Commission, as pointed out in the TRANSIT COMMISSION case, is exclusive. Such legislative action cast upon the party seeking authority for the abandonment of operations the affirmative and positive duty to act. Respondent wholly failed so to do. It did not file a proper application. It filed no application for a certificate. It got no ruling from the Interstate Commerce Commission nor any disclaimer of jurisdiction. All that it ever got was a letter from the Secretary (not a member of Interstate Commerce Commission) saying that the Commission had no jurisdiction over *an application for leave to terminate a contract*. That letter affirmed the Commission's power to issue a certificate authorizing abandonment of operations, but Respondent let the matter rest where the Secretary had left it.

Just as the interests of due administration of a bankrupt estate and the interests of the creditors in the protection of their rights require that exclusive jurisdiction of suits against the Trustee be vested in the court of Bankruptcy, so the interest of the public in the continued financial ability of an interstate carrier to furnish transportation and otherwise to serve the public, requires that the jurisdiction of the Interstate Commerce Commission to determine what is fair

compensation for the use of the property of one carrier by another be likewise exclusive. If the determination of such compensation were left to the courts, the amount of the compensation would be determined by different standards in each instance; it might be left to the discretion of a judge in one case and be fixed by a jury in another. There would be no uniformity between judges, no uniformity between the findings of various juries, nor any uniformity as to the rules of evidence, the facts proved or the measure of damages to be applied. In TEXAS & PACIFIC RAILWAY COMPANY v. ABILENE COTTON OIL COMPANY, 204 U.S. 426, opinion by MR. JUSTICE, later CHIEF JUSTICE, WHITE, the plaintiff sued in the Texas courts to recover the excessive part of an allegedly unreasonable tariff rate collected by an interstate carrier, although the rate charged had been filed with the Interstate Commerce Commission. The State court found the rate to be in fact unreasonable and excessive, and gave judgment for the excess to the plaintiff. On writ of error, this Court said:

> "For if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that, unless all courts reached an identical conclusion, a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed, the recognition of such a right is wholly inconsistent with the administrative power conferred upon the Commission, and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirement as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforce-

ment of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discrimination, and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted. Indeed, no reason can be perceived for the enactment of the provision endowing the administrative tribunal which the act created with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the act in the future, thus compelling the alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and be treated as unreasonable, without reference to previous action by the Commission in the premises. This must be, because, if the power existed in both courts and the Commission to originally hear complaints on this subject, there might be a divergence between the action of the Commission and the decision of a court. In other words, the established schedule might be found reasonable by the Commission in the first instance and unreasonable by a court acting originally, and thus a conflict would arise which would render the enforcement of the Act impossible."

The present case is shown to contain similar difficulties, if the principles laid down by Respondent are permitted to control. A jury has fixed the amount claimed by Respondent for use of the properties to August 27, 1943. That use, presumably, is still continuing. Who will fix the damages for subsequent periods? Certainly not the same jury. But if the decisions of this Court are followed, and the Interstate Commerce Commission is held to be the sole and exclusive authority, such problems no longer exist. No other rule is workable.

A recent example of the need for uniformity in matters

affecting interstate carriers by rail is found in SOUTHERN PACIFIC v. ARIZONA, — U.S. —, 89 L. Ed. 1469, decided June 18, 1945. In that case there was involved the Arizona statute limiting the length of trains to fourteen passenger or seventy freight cars. The court said:

> "When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority. * * *
>
> "But ever since Gibbons v. Ogden, 9 Wheat. (U.S.) 1, 6 L. Ed. 23, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority. * * * Whether or not this long recognized distribution of power between the national and the state governments is predicated upon the implications of the commerce clause itself; or upon the presumed intention of Congress, where Congress has not spoken * * * the result is the same. * * *
>
> "Hence the matters for ultimate determination here are the nature and extent of the burden which the state regulation of interstate trains, adopted as a safety measure, imposes on interstate commerce, and whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference. * * *
>
> "If one state may regulate train lengths, so may all the others, and they need not prescribe the same maximum limitation. The practical effect of such regulation is to control train operations beyond the boundaries of

the state exacting it because of the necessity of breaking up and reassembling long trains at the nearest terminal points before entering and after leaving the regulating state. The serious impediment to the free flow of commerce by the local regulation of train lengths and the practical necessity that such regulation, if any, must be prescribed by a single body having a nation-wide authority are apparent. * * *

"Here we conclude that the state does go too far. Its regulation of train lengths, admittedly obstructive to interstate train operation, and having a seriously adverse effect on transportation efficiency and economy, passes beyond what is plainly essential for safety since it does not appear that it will lessen rather than increase the danger of accident. Its attempted regulation of the operation of interstate trains cannot establish nation-wide control such as is essential to the maintenance of an efficient transportation system, which Congress alone can prescribe. The state interest cannot be preserved at the expense of the national interest by an enactment which regulates interstate train lengths without securing such control, which is a matter of national concern. To this the interest of the state here asserted is subordinate."

To hold that the State Court may fix the compensation for the use of trackage of one interstate carrier by another interstate carrier would lead to the application of at least forty-eight different sets of rules of evidence, forty-eight different laws of contract, and forty-eight different sets of rules as to the measure of damages. The resulting conflict and confusion in cases of this nature would render the enforcement of the principles of uniformity required by the Interstate Commerce Act impossible.

Conclusion

There is something fundamentally wrong in the judgment

of a State Court which arrogates to itself jurisdiction of an action to adjudicate property rights of the Trustee of an interstate railroad, in reorganization under Section 77 of the BANKRUPTCY ACT, and to enjoin the operations of the Trustee in bankruptcy over property in the custody of the court which appointed him.

There is something fundamentally wrong in the judgment of a State Court which disregards the settled legislative and judicial policy of the nation entrusting the public interest in interstate carriers by railroad to the Interstate Commerce Commission, and which substitutes a rule of damages fixed by court and jury and varying in each forum and in each case, for the judgment of that expert administrative agency "appointed by law and informed by experience" as to what is a fair compensation for the use of the tracks of one interstate carrier by another such carrier.

There is something fundamentally wrong in any judgment which treats a Trustee in bankruptcy (or anyone else) as a trespasser upon property which he cannot abandon without being subjected to a fine of $5000 per day, or imprisonment for three years.

PETITIONERS respectfuly pray that this Honorable Court reverse in all things the judgment of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas, and for such other orders and relief as may be appropriate.

Respectfully submitted,

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